

STRICTLY CONFIDENTIAL

TO: Ellen Loyd, HR Supervisor, Campus Shared Services

FROM: Paula Raffaelli, Complaint Resolution Officer, Office for the Prevention of Harassment and Discrimination

DATE: November 24, 2015

RE: Report of Sexual Harassment at [REDACTED]

Procedural Background

I first met with Complainant [REDACTED] on August 21, 2015. [REDACTED] brought forth a number of concerns regarding Cal Dining General Manager Jeffrey Topacio's workplace behavior. Relevant to my office, [REDACTED] described an incident from August 14, 2015, where grass-fed beef was being discussed. [REDACTED] described Topacio as gesturing to his crotch and stating, "I only feed this meat seafood." He also described Topacio as referring to his penis as a "third leg." Given the one-time nature of these comments, I proceeded with an "early resolution" of this matter rather than a formal investigation. The early resolution involved having a discussion with Topacio.

I met with Topacio on September 4, 2015. He denied making the comments. Nonetheless, I discussed appropriate workplace behavior with Topacio, and we reviewed the UC Policy on Sexual Harassment and Sexual Violence. He was also informed of the Anti-Retaliation Policy, which prohibits retaliation against any person for bringing forth an allegation.

I met with [REDACTED] again on October 1, 2015, as he had continued concerns with Topacio's behavior. I referred his concerns to you on October 2, 2015, and you followed up with an investigation into [REDACTED] allegations against Topacio.

Fact-finding

It is my understanding that in the course of your investigation, you spoke with two other witnesses, [REDACTED] and [REDACTED], who corroborated [REDACTED] allegations regarding Topacio's sexual comments, and who also brought forth new allegations of sexual language. In particular, [REDACTED] corroborated [REDACTED] allegation that on August 14, 2015, Topacio referred to his penis as a "third leg" and that he made physical gestures referring to his penis as "very large."

[REDACTED] also stated that in mid-September, Topacio compared his penis to the size of a 12" chef knife and that he gestured to his crotch saying, "Here, if you want a big one." [REDACTED] corroborated this account. I add that on September 23, 2015, [REDACTED] emailed me to say that [REDACTED] had told him Topacio made a comment comparing his penis to the 12-inch knives. As he

was not there [REDACTED] could not verify the statement. [REDACTED] was provided with my contact information if he wanted to make a report, but he did not contact me.

It is also my understanding from your fact-finding report that [REDACTED] reported that following an incident where Topacio yelled at [REDACTED] regarding soup lids, Topacio said to [REDACTED] "What's wrong with this mariposa?" in reference to [REDACTED] "Mariposa" is a derogatory slang term that translates to "fag."

Finally, I note that in [REDACTED] statement, he added that he witnessed Topacio with a female student in his lap.¹

Ultimately you conclude that [REDACTED] allegation that Topacio has made inappropriate sexual references in the workplace is supported by witness statements and interviews from [REDACTED] and [REDACTED]

OPHD Analysis

The UC Policy on Sexual Harassment and Sexual Violence ("the Policy") defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive."² It adds, "To determine whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred." In reviewing whether the conduct violated this Policy, we use a "preponderance of the evidence" standard.

I find that Topacio's behavior violates the UC Policy on Sexual Harassment and Sexual Violence. Topacio used sexual innuendo and gestured to his penis in front of employees in August and in mid-September. The employees were uncomfortable with this behavior and did not welcome it. This is both verbal and non-verbal conduct of a sexual nature. Significantly, Topacio made the comment comparing his penis to the 12-inch knives around September 23, 2015, which is *after* he met with me. At our September 4, 2015 meeting, we discussed appropriate language for the workplace and Topacio was warned of how his behavior could violate the Policy.

¹ Topacio did not have an opportunity to comment on this reported behavior and, as a result, no determination was made as to whether or not it occurred.

² Under the Policy, sexual harassment of one student by another student is defined as "unwelcome conduct of a sexual nature that is so severe and/or pervasive, and objectively offensive, and that so substantially impairs a person's access to University programs or activities that the person is effectively denied equal access to the University's resources and opportunities." The Policy does not impose this heightened standard on sexual harassment between staff members.

Also significant is Topacio's comment referring to [REDACTED] as "mariposa." The Policy states that "harassment that is not sexual in nature but is based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation also is prohibited by the University's nondiscrimination policies if it denies or limits a person's ability to participate in or benefit from University . . . employment. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether a hostile environment due to sexual harassment exists, the University may take into account acts of discrimination based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation." Referring to [REDACTED] as "mariposa" because he cried reflects discrimination on the basis of sex or gender stereotyping and sexual orientation.

[REDACTED], [REDACTED], and [REDACTED] all described a negative "vibe" or "feeling" when Topacio is in the restaurant. [REDACTED] specifically described that he has heightened anxiety, and that Topacio's sexual comments made him uncomfortable at his workplace. Further, both [REDACTED] and [REDACTED] described Topacio offering everyone but [REDACTED] free football tickets, again *after* my meeting with Topacio.

Combined, these incidents have explicitly affected and interfered with, at the least, [REDACTED] and [REDACTED] employment and created a hostile work environment under the Policy. Consequently, it is determined that Topacio violated the University of California Policy on Sexual Harassment and Sexual Violence.

Please do not hesitate to let me know if you have any questions or concerns.

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Fact Finding Report

and Complaint

Prepared by: Ellen Loyd, CSS Human Resources Supervisor (Fact finder)

December 2, 2015

Background

On October 2, 2015, this fact finder was contacted by Paula Raffaelli, Complaint Resolution Officer for the Office for the Prevention of Harassment and Discrimination (OPHD) related to a complaint received by [REDACTED]. Paula requested the appropriate HR business partner to meet with [REDACTED] in order to address his concerns about Jeffrey Topacio, General Manager. [REDACTED] complaint to OPHD described Topacio demonstrating unprofessional and demeaning behavior with staff.

Summary of Allegations

On October 4, 2015, [REDACTED] alleged:

- 1) Topacio "consistently exhibits bullying behaviors." Topacio berates and intimidates staff and raises his voice to them.
- 2) Topacio has created a hostile environment through his intimidating interactions with staff.
- 3) Topacio has made inappropriate sexual references in the workplace.

Applicable Policies

1. University of California, Berkeley Workplace Violence Prevention Policy (Attachment A)

The policy states in part: The University of California, Berkeley is committed to promoting and maintaining a safe environment for its employees. Threatening, intimidating, or violent behavior will not be tolerated in the University of California, Berkeley workplace. If such conduct occurs, it should be promptly reported to the proper authority and investigated.

Employees found to have violated this policy will be subject to disciplinary action up to and including immediate dismissal under the applicable code of conduct, collective bargaining agreement, or personnel policy. The University may assist in pursuing civil penalties, criminal penalties, or other appropriate action, against the offender regardless of the offender's relationship to the University.

2. University of California (Interim)Policy on Sexual Harassment and Sexual Violence (Attachment B)

The policy states in part: The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual harassment and sexual violence, and that such behavior violates both law and University policy. The University appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy on Sexual Harassment and Sexual Violence (hereafter referred to as Policy).

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Complainant [REDACTED]

Subject – Jeffrey Topacio, General Manager, Campus Restaurants, Cal Dining

Witnesses

The following employees were interviewed; [REDACTED]
[REDACTED]
[REDACTED]

Summary of Written Statements and Notes from Meetings

[REDACTED]
[REDACTED]
This fact finder met with [REDACTED] and his representative [REDACTED] on October 8, 2015. [REDACTED] position as [REDACTED] and covered under the [REDACTED] was clarified. [REDACTED] described being emotionally upset by Topacio's treatment of him. He described an overall negative "vibe" and a heightened sense of anxiety experienced by him and the [REDACTED] when Topacio visits. [REDACTED] estimated Topacio's visits to be three times a week for up to several hours at a time. [REDACTED] described a habit of Topacio to berate and single out employees when he feels they are not performing a task properly. The criticism is always done in public and never addresses the root cause of a problem. [REDACTED] also expressed frustration with Topacio's habit of changing rules and providing different direction than what was given by his supervisor. [REDACTED] described Topacio as making snap judgments without asking questions and observing the operation. During the meeting thirteen (13) issues described in his complaint were reviewed.

- 1) Topacio promised a career position to [REDACTED]
- 2) Topacio's interaction with [REDACTED] concerning what time the kitchen closed last semester – Topacio was intimidating, aggressive and disrespectful.
- 3) Topacio gave different direction to a student worker preparing sliced tomatoes without speaking to her supervisor creating confusion for the student and creating a potential disservice to customers.
- 4) Topacio created confusion and undermined the chef's authority when he questioned a student employee preparing vinaigrette. [REDACTED] stated Topacio told the student employee that "students don't use knives."
- 5) Topacio yelled at and unfairly criticizing student workers for cleaning the floor mats on top of the prep tables without gathering any information on how they were instructed. Topacio also acts disrespectfully to employees by not addressing them by name and instead referring to them in front of other employees as "her, she, him or her."

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6) [REDACTED] does not have slip-resistant shoes and uniform pants and there is confusion concerning the laundering of uniforms and aprons. [REDACTED] also cited a co-worker [REDACTED] who may need an accommodation as he cannot wear a hat made of a synthetic material.

(i) As of October 16, 2015, [REDACTED] has shoes. Pants were ordered on October 20, 2015 as confirmed by [REDACTED]

(ii) [REDACTED] has received instruction regarding the steps to undertake in order to receive an accommodation related to wearing a synthetic hat.

7) Topacio's interactions with [REDACTED] are tense and demeaning.

8) Topacio's "scolding of [REDACTED] related to meat storage is unfair and places sole responsibility on him for proper meat storage."

9) Topacio unfairly criticized and embarrassed [REDACTED] when he forced him to show Topacio how to use the soup lid clip as co-workers left the soup uncovered.

10) Topacio offered free football tickets to everyone except [REDACTED] and does not greet [REDACTED]

11) Topacio does not observe HACCP as he does not wash his hands.

12) As reported to OPHD, Topacio has engaged in inappropriate sexual behavior. On August 14, 2015, Topacio stated that his penis was "so big that they call it a third leg" and while gesturing to his crotch he stated "I only feed this meat seafood."

13) Topacio has made inappropriate remarks about his co-workers referring to them as "ugly ducklings" and publicly embarrassed [REDACTED] by advertising his waist size.

[REDACTED] expressed gratitude for his co-workers and the direction and support from [REDACTED] [REDACTED] stated his commitment to his work and a sincere desire for the issues with Topacio's management to be addressed as they have caused him considerable stress.

[REDACTED]

On October 6, 2015 this fact finder met with [REDACTED] and his representative, [REDACTED] and [REDACTED] to discuss his knowledge of the incidents described in [REDACTED] statement. [REDACTED] began the discussion with a description of an incident occurring on October 2, 2015 between him and Topacio. [REDACTED] stated that he was adjusting his hairnet and Topacio raised his voice to him and yelled "what are you doing? You need to change your gloves." [REDACTED] felt this was inappropriate as Topacio did not need to yell at him and [REDACTED] touched the exterior of the hairnet which did not necessitate a glove change. [REDACTED] described an overall negative feeling at [REDACTED] whenever Topacio visits the restaurant. [REDACTED] described a previous incident approximately a month before when Topacio raised his voice to him and criticized him for the oil he was using and said "you don't know what you're doing. You don't know anything?" [REDACTED] felt this was very disrespectful and demeaning. [REDACTED] stated Topacio is disrespectful of homosexuals. When asked to explain this comment [REDACTED] stated that Topacio curses and "says bad things about gays." [REDACTED] stated Topacio asked him "what's wrong with this *mariposa*?" when referring to [REDACTED]. [REDACTED] explained this was a derogatory comment referring to [REDACTED] as a "butterfly", which is slang for homosexual. [REDACTED] stated Topacio asked him this question after berating [REDACTED] about clips for the soup lids and [REDACTED] began to cry. [REDACTED] stated that Topacio was screaming at [REDACTED] [REDACTED] described Topacio's general method of addressing an issue as intimidating. Often the issue being addressed involves others, but Topacio will lash out at the employee whom Topacio identified as not following SOP instead of addressing the issue with the entire kitchen staff or the supervisor at an appropriate time. [REDACTED] also stated Topacio has made inappropriate sexual references. When asked for examples of this behavior, Lomelli cited the example provided by [REDACTED] on August 14, 2015. [REDACTED] confirmed he heard Topacio say he "had a third leg" to describe his penis and has made physical gestures referring to his penis as very large. [REDACTED] also stated Topacio plays favorites and likes some employees more than others.

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When asked for examples of this behavior, [REDACTED] shared an occasion during which he witnessed Topacio with a female student in his lap and that he exhibits an inordinate level of friendliness toward female student workers.

On October 19, 2015 this fact finder met with [REDACTED] to clarify a comment he mentioned to this fact finder regarding 12" chef knives on October 6, 2015. [REDACTED] stated that at around the middle of September (exact date unavailable), a co-worker was looking for a knife and could only locate the new 12" chef knives that were recently delivered to [REDACTED]. [REDACTED] stated that Topacio was comparing the size of the knife to his penis and gesturing to his crotch saying, "here, if you want a big one." [REDACTED] also stated that Topacio was walking around the facility immediately after this exchange saying "I'm a bad motherfucker."

[REDACTED]
On October 6, 2015, this fact finder met with [REDACTED] with [REDACTED] also in attendance. [REDACTED] stated that she was not a witness to the events described by [REDACTED] or [REDACTED]. [REDACTED] offered that she has given management suggestions to Topacio as "he does not listen and gives feedback on the floor and not in private." [REDACTED] stated that she could give him feedback and that his comments to her "don't bother her any longer."

On October 16, 2015, this fact finder met with [REDACTED] to discuss her knowledge of Topacio's offer of a career position to [REDACTED]. [REDACTED] stated she overheard a telephone conversation between Topacio and [REDACTED] before [REDACTED] accepted the offer of a Limited position. [REDACTED] stated she was in a UC vehicle with Topacio at the beginning of the semester and they were headed to Acme bread. Topacio was speaking to [REDACTED] on the speaker phone setting of his mobile phone. [REDACTED] stated she heard [REDACTED] ask Topacio if she was going to get a career offer and Topacio told [REDACTED] "yes." [REDACTED] stated she knew it was not a career position that [REDACTED] would be performing as she was not aware of any open career opportunities. [REDACTED] did not address this with Topacio as she thought maybe he knew something that she did not.

[REDACTED]
On October 9, 2015 this fact finder met with [REDACTED]. [REDACTED] started the conversation saying that he was [REDACTED] and described his philosophy on training and developing staff. He stated his method of interacting with and developing staff was in contrast to Topacio's management style and asked "does he feel he is supposed to act this way?" When asked for clarification of this comment, [REDACTED] opined that he understood Topacio had been promoted in the last six (6) months and thought perhaps Topacio felt this was the way he was supposed to act. [REDACTED] cited examples of Topacio's management style by stating Topacio has shared employee vacation accruals with the staff and that Topacio does "a lot of finger pointing" and "making snap judgements without knowing what is going on." [REDACTED] stated that whenever Topacio visits [REDACTED] "there is a negative vibe when he shows up." He also described Topacio as always bringing issues to [REDACTED] attention and not addressing issues directly with him as [REDACTED] and said he has witnessed Topacio "giving [REDACTED] a real hard time."

[REDACTED] described an incident between [REDACTED] and Topacio regarding [REDACTED] uniform hat. [REDACTED] believed Topacio was under the mistaken impression that [REDACTED] had touched his head, which would have required [REDACTED] to change his gloves. [REDACTED] did not see [REDACTED] touch his head and thought he touched his ear. He described Topacio's treatment of [REDACTED] as "disgusting." [REDACTED] stated Topacio would not allow [REDACTED] to speak and "yelled at him." He further described the incident as "very

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confrontational" and "it was hostile." [REDACTED] offered that Topacio could have calmly stated to [REDACTED] that he needed to change his gloves without yelling at him.

[REDACTED] stated that Topacio has told him that [REDACTED] is "overly sensitive." [REDACTED] described an incident also cited by [REDACTED] during which Topacio "started treating [REDACTED] and [REDACTED] very rudely" when [REDACTED] was preparing vinaigrette. [REDACTED] described Topacio as "controlling and micromanaging."

[REDACTED] also witnessed the incident described by [REDACTED] between a student worker [REDACTED] and Topacio during which [REDACTED] was slicing tomatoes. [REDACTED] described Topacio as "loud" and yelling at [REDACTED] saying "who told you to do it this way?"

[REDACTED] also described an incident detailed by [REDACTED] during which student workers were cleaning floor mats on the stainless steel work tables. [REDACTED] stated "I take responsibility for that and I took the blame." [REDACTED] stated the students were trying to get the job done and he did not give them proper instruction. [REDACTED] stated Topacio was "loudly questioning" the student workers and said "what are you doing?" and "who told you to do it this way?" [REDACTED] stated that whenever Topacio interacts with student workers that "he treats them like they are idiots."

[REDACTED]
This fact finder met with [REDACTED] on October 16, 2015. [REDACTED] began the discussion describing her dissatisfaction with Topacio as she stated he "promised me a career position" and "he misrepresented the University and I took his word for it." [REDACTED] stated she confirmed her role would be a career position with Topacio and that she resigned a full-time job only to learn her role is a Limited position.

[REDACTED] stated Topacio "never listens to the staff and he raises his voice to them." She related an incident that occurred on her second day at work during the current semester. [REDACTED] was making a sandwich and she had not been informed that a recipe was available as she received verbal instruction from a co-worker. Topacio loudly approached her asking "who made this?" and "you're always defending yourself." [REDACTED] described feeling "humiliated" and stated Topacio "could speak to me in a nice way."

On another occasion (unknown date) [REDACTED] described Topacio as yelling at [REDACTED] and "talking in front of everyone and not taking business off the floor to have discussions in private" and that Topacio's treatment of employees is "embarrassing."

[REDACTED]
On October 16, 2015, this fact finder met with [REDACTED] at brown's. [REDACTED] described a "bad vibration when Topacio come to [REDACTED]" and that Topacio sometimes "yells and screams" and that it is "his way or the highway." [REDACTED] opined that Topacio "wants to feel like he is in command."

[REDACTED] stated that he witnessed the event in mid-September described by [REDACTED] during which Topacio was gesturing to his crotch and alluding to having a penis that was the size of the new 12" chef knives. [REDACTED] described unhappiness over the way Topacio has singled out [REDACTED] and that recently Topacio came to [REDACTED] and greeted everyone except [REDACTED] and also offered free football tickets to all staff except [REDACTED]

Jeffrey Topacio

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On November 13, 2015 this fact finder met with Jeffrey Topacio to discuss the complaints lodged against him. Also in attendance at the meeting was [REDACTED]

The following questions were posed to Topacio during the meeting:

1. Do you recall if you raised your voice to [REDACTED] on September 21, 2015 regarding his use of cooking oil? How would you characterize your interaction with [REDACTED]?

Response: I remember the incident, but it had nothing to do with cooking oil. [REDACTED] took two (2) days off from work because he was upset about an incident, but I don't think that's the incident you are asking about. No, I did not raise my voice to him.

2. Do you recall if you raised your voice to [REDACTED] on October 2, 2015 regarding him touching his head? How would you characterize your interaction with [REDACTED]?

Response: Yes, [REDACTED] was defensive. I saw him from across the room touch his head and made a gesture to change his gloves. It's a food safety issue. He said other people come from the bathroom and don't even wash their hands. No, I did not raise my voice to him. He was upset about this and that's why he took two (2) days off. He also had an issue with wearing the issued uniform hat as he says he has [REDACTED] and could not wear the hat.

3. Do you recall an interaction with [REDACTED] on September 22, 2015 regarding the lids for soup containers? Did you raise your voice to [REDACTED]? Did you ever describe [REDACTED] to anyone as a "mariposa" or "maricon"? How would you characterize your interaction with [REDACTED] on this occasion?

Yes, I recall a discussion I had with [REDACTED] as the lids for the soup containers were not properly attached and I wanted to show him how to do it properly. He was defensive. I did not raise my voice to him as I recall. I know that I can be excited and I am working on my delivery. I need to slow down and be respectful of myself and others. No, I have never called [REDACTED] "maricon" or "mariposa". The only conversation I have had with others about [REDACTED] is a comment I made to [REDACTED] that [REDACTED] seems to be catching on to the work.

4. Have you ever compared the size of your penis as equivalent to a 12" chef's knife or referred to your penis as a third leg in conversation with co-workers?

No.

5. Do you recall a conversation with [REDACTED] regarding the type of appointment (Limited or Career) she would be performing? What appointment type did you communicate to [REDACTED]

Yes. I told her she would be coming back in January as a Limited, and that if she did a good job I would put in a good word for her as Career.

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6. Did you borrow [REDACTED] car for work purposes and damage it? Where was the damage and how did it happen? What was the nature of your conversation with [REDACTED] after you brought the car back?

No, I did not damage it. She offered it to me as I needed a car to pick up bacon for the operation. It was a hit and run. [REDACTED] let me know how much the deductible was and there was discussion about claiming it on my insurance or hers. I spoke to my wife and decided that [REDACTED] should claim it on hers, which is actually her [REDACTED] insurance. I told [REDACTED] to claim it on hers. She told me the deductible was [REDACTED] which I thought was high. I asked her what was going on and she has not followed up with me.

On November 16, 2015 this fact finder met with Topacio as he wanted to discuss his thoughts on the complaints. Topacio stated that he spent the weekend thinking specifically about what motivated [REDACTED] to make a complaint about him. Topacio related [REDACTED] unhappiness about his schedule change, and the incident related to his uniform hat.

Topacio also discussed the incident with [REDACTED] and her vehicle. Topacio stated, "I want to make it clear. It was a hit and run." When asked if he had access to a campus vehicle, Topacio stated, "yes, but I had not taken a vehicle off campus before and did not know if I could do it. Topacio stated the damage to [REDACTED] car was on the rear driver's side of the vehicle only.

Topacio also offered that the investigation has been weighing heavily on him and that he takes his job seriously. He stated he is willing to make amends to those he has offended. He also stated he did not want this to affect his career here and wanted his employment to continue. He would be willing to transfer and that if he went back to [REDACTED] he could still be professional and would have no feelings of revenge or retaliation.

Summary of Findings

[REDACTED] allegation that Topacio exhibits bullying behaviors by berating and yelling at staff, is supported by witness statements and interviews from [REDACTED]

[REDACTED] allegation that Topacio has created a hostile work environment is supported as the incidents described by [REDACTED] and [REDACTED] have explicitly affected and interfered with, at the least [REDACTED] and [REDACTED] employment.

[REDACTED] allegation that Topacio has made inappropriate sexual references in the workplace is supported by witness statements and interviews from [REDACTED]

As confirmed by review of the Office for the Prevention of Harassment and Discrimination (OPHD), Topacio's behavior is in violation of the University of California, Berkeley Workplace Violence Prevention Policy and the University of California (Interim) Policy on Sexual Harassment and Sexual Violence.

Additionally, Topacio exercised poor judgement by driving [REDACTED] vehicle while performing work for the University. The vehicle was damaged while under Topacio's care. Topacio acknowledged owing [REDACTED] money toward the repair (3) which has not been paid to [REDACTED] as of this date.

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[REDACTED] assertion that she would be performing a Career position in January 2015 is supported as [REDACTED] stated she heard Topacio confirm with [REDACTED] that the position she would be performing was a Career position.

(1) [REDACTED]

Attachments

- A. University of California, Berkeley Workplace Violence Prevention Policy
- B. University of California (Interim)Policy on Sexual Harassment and Sexual Violence

- 1. Statement of [REDACTED]
- 2. Statement of [REDACTED]
- 3. Text message from [REDACTED] to Jeffrey Topacio
- 4. [REDACTED] auto repair bill

